

Application No. 10/723,853
Attorney Docket No. 14159US02

REMARKS

The present application includes claims 1-23. Claims 16-18 were allowed by the Examiner. Claims 1, 6-9, 14, 15, 19 and 23 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sioux Steel Company's "Dura Life Containment Systems" brochure. Claims 2-5, 10-13, and 20-22 were objected to as being dependent upon a rejected base claim, but Examiner has stated would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. However, because the priority date of the application predates the publication date of the cited brochure, Applicant respectfully submits that the brochure is not prior art.

The present application claims priority to U.S. Provisional Application No. 60/430,589, which was filed on December 2, 2002. The cited Sioux City Steel "Dura Life Containment Systems" brochure does not provide a publication date. However, in the Information Disclosure Statement that disclosed this reference, Applicant submitted that the cited brochure was published around the middle of 2003. Applicant's knowledge of the publication date of the brochure was based on information gained through Applicant's employment with Sioux City Steel, who is the Assignee of record in this case, and who is also the owner of the cited "Dura Life Containment Systems" brochure and the manufacturer of the containment systems identified therein.

Because the present invention claims priority to the December 2, 2002 filing date of the provisional application, the present invention predates the 2003 publication date of the cited brochure, and therefore the cited brochure does not qualify as prior art. In view

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of the foregoing, Applicant respectfully submits that the application, including all claims,
is in condition for allowance.

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CONCLUSION

A Notice of Allowance is requested. If Examiner has any questions or Applicant can be of any assistance, Examiner is invited and encouraged to contact Applicant at the number below.

The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

Date: August 12, 2004



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